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**MAR 29 2011**

**OFFICE OF PETITIONS**

**K & L Gates LLP  
P.O. Box 1135  
Chicago, Illinois 60690**

In re Application of :  
Alvin BERGER et al. : **DECISION GRANTING PETITION**  
Application No. 10/089,658 : **UNDER 37 CFR 1.137(b)**  
Filed: 22 July 2002 :  
Atty. Docket No.: 3712161.00044 :

This is a decision on the petition under 37 CFR 1.137(b), filed 4 January 2011, to revive the above-identified application ("Application").

The petition is **GRANTED**.

The application became abandoned as a result of petitioner's failure to take appropriate action in a timely manner after the decision of 20 August 2010 by the Board of Patent Appeals and Interferences (Decision). Therefore, the proceedings as to the rejected claims were terminated. *See* 37 CFR 1.197(c). As no claim was allowed, the application became abandoned on 21 October 2010. *See* MPEP 1214.06.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a Statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).

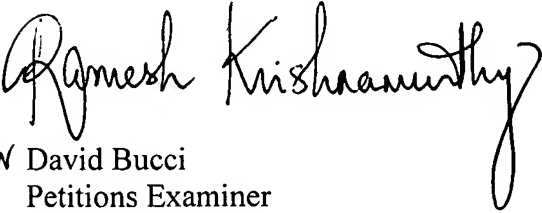
The petition satisfies the conditions for revival pursuant to 37 CFR 1.137(b) by including (1) a reply in the form of a Request for Continued Examination (RCE), and a submission required under 37 CFR 1.114, (2) a petition fee of \$1620.00, and (3) a Statement of unintentional delay. The reply to the Decision is accepted as having been unintentionally delayed.

There is no indication that the person signing the instant Petition was given a power of attorney or authorization of agent to prosecute the Application. Further, it is not apparent whether the signer of the Petition was in a position to have firsthand knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and

circumstances of the delay. *See*, 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (10 October 1997), 1203 Off. Gaz. Pat. Office 63, 103 (21 October 1997). In the event that such an inquiry has not been made, Petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, Petitioner must notify the Office.

General inquiries relating to this decision should be directed to Robert DeWitty, Petitions Examiner, Office of Petitions (571-272-8427).

The application file will be referred to Technology Center Art Unit 1618 for further action on the filed Response.

  
for David Bucci  
Petitions Examiner  
Office of Petitions